

# TECHNICAL BULLETIN

NO.13

OCTOBER 2005



**TO ALL EMPLOYERS WITH MEMBERS IN THE LOCAL GOVERNMENT PENSION SCHEME. PLEASE ENSURE COPIES ARE PASSED TO RELEVANT STAFF.**

## Equal Pay Settlements

### Introduction

We are aware that a number of our participating employers, Local Authorities in particular, are considering equal pay claims. It is essential that the pensions treatment of any payments made in respect of these claims is clarified *ex ante*, in order to avoid any dispute or levy of additional contributions after payment is made.

The purpose of this Technical Bulletin is to bring this matter to employers' attention and to provide some guidance.

### Issues

The pensions issues involved are:

- should pension contributions be deducted from settlement payments made; and
- should any payments made count in the calculation of final salary for those employees nearing retirement?

The key to both of these issues is whether any payments made constitute part of an employee's pay.

As ever, our first recourse in answering this question is to the regulations.

### Regulations

The Local Government Pension Scheme Regulations in their entirety can be accessed via <http://www.lg-employers.gov.uk/timeline/Latest.htm>

The relevant Regulation in this instance is regulation 12 of the LGPS (Scotland) Regulations 1998 (as amended). This is reproduced in full in the appendix to this Bulletin.

In summary, regulation 12 provides that all payments (other than those specifically excluded at 12(2)) made

- to an employee
- for his/her own use
- in respect of his/her employment

form part of his/her pay for pensions purposes.

### **Assessment**

Our initial assessment is that equal pay settlements are likely to fall within this definition of pay, particularly as there is no explicit reference to compensation payments within the regulation and they would therefore be assessed to fall within “other payments” at 12(1)(a) and be treated as pay. However, the details of settlement may vary from employer to employer and even within employers, and ultimately the correct treatment of each payment (whether individual or bulk) may be dependent upon the specific terms of the settlement.

### **Employer’s Responsibility**

In the first instance it will be the responsibility of the employer to determine whether or not a payment constitutes pensionable pay in terms of the regulations.

There is one further feature of the regulations that may be important in this regard. The final part of regulation 12(10) provides that “No sum may be taken into account in calculating pay unless income tax liability has been determined on it.”

Employers’ pensions treatment of settlement payments may therefore be subject to their tax treatment of them.

### **SPFO**

Employers should advise SPFO of any settlement payments they are making together with their pensions treatment.

Where payments are treated as pensionable the employer should deduct employee contributions, add employer contributions and make payment to SPFO in the usual way. The employer will also need to provide a breakdown of the payment for each individual member together with details of the period covered by the payment so that SPFO can apply the correct amounts to the individual years to ensure that final salary calculations are completed accurately.

Where payments are treated as non-pensionable, SPFO must still be advised of the payment details, together with a clear explanation, with reference to the regulations, of the treatment so that subsequent disputes with individual members can be avoided.

Please contact Tam Hammond on 0141 287 7441 if you require any further information.

### **Summary**

- Equal pay settlements may be pensionable.
- Responsibility for determining the treatment lies in the first instance with employers.
- Employers should initially decide their treatment with reference to Regulation 12 of the LGPS(S) 1998 Regulations.
- The tax treatment may be important in determining the pensionable treatment.
- SPFO should be advised of the details of any payments.
- Please contact SPFO if you require any further information.

**Appendix: Excerpt from LGPS (Scotland) Regulations 1998 (as amended)**

**1998 No. 366 (S.14)**

**PENSIONS**

The Local Government Pension Scheme (Scotland) Regulations 1998

**12. Meaning of "pay"**

**12.** - (1) An employee's pay is the total of-

(a) all the salary, wages, fees and other payments paid to him for his own use in respect of his employment;

(b) any other payment or benefit specified in his contract of employment as being a pensionable emolument.

(2) However, an employee's pay does not include-

(a) payments for non-contractual overtime;

(b) any travelling, subsistence or other allowance paid in respect of expenses incurred in relation to the employment;

(c) any payment in consideration of loss of holidays;

(d) any payment in lieu of notice to terminate his contract of employment;

(e) any payment as an inducement not to terminate his employment before the payment is made;

(f) any amount treated as the money value to the employee of the provision of a motor vehicle or any amount paid in lieu of such provision (but see paragraphs (8) and (9));(SI2000/199) or

(g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration or Reorganisation) (Scotland) Regulations 1995.

(3) For regulation 11, the pay of a part-time employee for any period is the pay he would have received if during that period he had worked the contractual hours.

(4) However, paragraph (3) does not apply to periods during which the employee was away from work by reason of illness or injury with reduced or no pay.

(5) If a Scheme employer agrees with the bodies or persons representative of any description of employees the method for determining the whole or a specified part of the pay of employees of that description for the period during which the agreement applies, the pay of a member who is such an employee is the amount so determined.

(6) A Scheme employer must notify in writing every member affected by such an agreement.

(7) That notification must include a conspicuous statement as to the place where he may obtain information about details of the agreement.

(8) Where-

(a) a member's contribution under regulation C2 or C3 of the 1987 Regulations for a period including 31st December 1992 was based on remuneration which for the 1987 Regulations as then in force included an amount representing the money value to him of the provision of a motor vehicle; and

(b) immediately before the commencement date his remuneration for the 1987 Regulations included such an amount,

then his pay includes such an amount.

(9) However, paragraph (8) shall cease to apply if-

(a) he leaves employment with the employing authority who were employing him on 31st December 1992 (otherwise than as a result of a transfer to another Scheme employer which is beyond his control); or

(b) he is neither provided with a motor vehicle nor receives an amount representing the money value to him of the provision of such a vehicle.

(10) No sum may be taken into account in calculating pay unless income tax liability has been determined on it.

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If you have any questions regarding this bulletin please direct them to your usual contact within SPFO or speak to Tom Hammond on 0141 287 7441 or Sarah Mallon on 287 7348.